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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 90

ANNA S. BAINBRIDGE, PETITIONER,

vs.

MERCHANTS & MINERS TRANSPORTATION COMPANY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF PENNSYLVANIA

PETITION FOR CERTIORARI FILED MAY 19, 1932

CERTIORARI GRANTED OCTOBER 10, 1932

(36,781)

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SUPREME COURT OF THE UNITED STATES

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 4, 1932

[fols. a-1]

IN COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

Docket Entries

Sums. trespass, Exit Dec. 17, 1929, Ret. 3rd Monday Jan. 1930. Served 12/30/29.

Jan. 22, 1930, James M. West, 3rd, Attorney for Defendant, de bene esse.

Sept. 26, 1931, Statement of Claim and notice to file Affidavit of Defense filed.

Oct. 10, 1931, Rule to dismiss action for want of jurisdiction, proceedings to stay meanwhile.

Eo Die. Petition filed.

Nov. 6, 1931. Rule absolute.

Nov. 20, 1931. Certiorari of Supreme Court as of Jan. 1932, No. 136, brought into office.

Nov. 23, 1931. Afft. of Service of appeal from Court order upon Hon. Thos. D. Finletter on Nov. 20, 1931 filed.

Nov. 23, 1931. Afft. of Service of appeal upon Biddle, Paul, Dawson & Yocum, Attorneys for Defendant, on Nov. 20, 1931, filed.

Nov. 25, 1931. Opinion on ruling of Court of Nov. 6, 1931 filed.

[fol. 2] In Court of Common Pleas of Philadelphia County

Plaintiff's Statement of Claim

The plaintiff above named brings this action against the defendant above named to recover damages upon a cause of action whereof the following is a statement:

1. On and prior to December 30, 1927, the defendant was engaged in the operation of a steamship line in interstate and foreign commerce upon navigable waters, and in the operation of a particular steamship, the S. S. Chatham, which, on or about the said date, was temporarily, between voyages in interstate and foreign commerce, moored at a certain pier of the said defendant's in the City of Philadelphia, State of Pennsylvania.

2. At and prior to the said time, the said steamship was under the exclusive control and management of the defendant, its servants, agents or employees.

3. On and for a long time prior to the above mentioned date, the plaintiff was employed by the defendant as a member of the crew upon the said steamship, the S. S. Chatham, her duties as said member of the crew being to act as a maid and among others to make up the berths in the staterooms to which she was assigned by the said defendant, her employer.

4. In a certain stateroom upon the said steamship were a lower and an upper berth set against one of the walls of the said stateroom, the said lower berth being wider than the said upper berth which was directly above it.

5. At and prior to the aforesaid date, the said stateroom and the lower and the upper berths therein, and the condi-[fol. 3] tion thereof, were under the sole and exclusive control and management of the defendant, its servants, agents or employees.

6. On or about the date aforementioned, at or about 9:30 o'clock A. M., the plaintiff, Anna S. Bainbridge, was lawfully in the said stateroom, and, in pursuance of the directions of her superior, was engaged in preparing the said upper berth therein, when and because of the defective and torn condition of the bedding of the said lower berth her foot caught in same and she was caused to fall to the floor and to strike a bucket placed thereon by a fellow servant of the said defendant, and to suffer the injuries hereinafter described, by reason entirely of the negligence of the defendant, its servants, agents or employees, and without any negligence upon the part of the plaintiff.

7. The defendant, its servants, agents or employees was negligent in that:

(a) There existed in the said lower berth a defect known to the said defendant, which caused a condition dangerous to the health and safety of its employees.

(b) No attempt had been made by the defendant, its servants, agents or employees to repair or remedy the said defect, or to make the said berth safe for the performance

of her duties by the said plaintiff, although the said defect had existed continuously for a long time prior to the said date.

(c) No warning or notice of the dangerous condition of the said lower berth was given.

(d) The said berth was in such a dangerous condition that the plaintiff was caused to fall.

[fol. 4] (e) The said bucket was put upon the floor in a place dangerous to the plaintiff in the performance of her duties, without her knowledge, by an employee of the defendant.

(f) The said berth and defect therein, and the said bucket were placed and permitted to remain in a condition contrary to the Laws of the United States of America.

8. The servants, agents or employees herein referred to were at all times and for all acts and omissions herein set forth the servants, agents or employees of the defendant, and engaged in and upon the business of the defendant.

9. By reason of the said occurrence, the plaintiff, Anna S. Bainbridge, suffered contusions of her entire body, severe and permanent injury to the muscles and nerves of her neck, injury to her spine, concussion of the brain, was otherwise injured in and about her head, neck, arms, legs and body, was internally and permanently injured, and suffered a severe shock to her nerves and nervous system.

10. Because of the said injuries, the plaintiff, Anna S. Bainbridge, has suffered and will suffer mental and physical pain, anguish and distress; she has suffered and will suffer damage by reason of her loss of earning power; she has spent and will spend money for medicine and medical attendance; she has suffered and will suffer loss by reason of damage to her personal property.

11. Wherefore plaintiff, Anna S. Bainbridge, claims damages of the defendant in the sum of $50,000.

(Stamped:) William Charles Brown, Attorney for plaintiff.

[fol. 5] *Duly sworn to by Anna S. Bainbridge. Jurat omitted in printing.*

IN COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

PETITION FOR RULE TO SHOW CAUSE WHY THE ABOVE-ENTITLED ACTION SHOULD NOT BE DISMISSED FOR WANT OF JURISDICTION

[1][The petition of Merchants & Miners Transportation Company, defendant, respectfully represents:

1. Your petitioner is a corporation authorized and existing under and by virtue of the laws of the State of Maryland, and registered to do business in the Commonwealth of Pennsylvania.

2. Your petitioner's principal office is located at 112 South Gay Street in the City of Baltimore and the State of Maryland.

3. Plaintiff, a former member of the crew of your petitioner's Steamship "Chatham", instituted the above entitled action on December 27, 1929. The writ of summons [fol. 6] was duly served upon the Secretary of the Commonwealth of Pennsylvania on December 30, 1929.

4. Your petitioner on January 22, 1930, caused an appearance de bene esse to be entered in the action so that objection might be made to the jurisdiction of your Honorable Court in the event plaintiff elected to maintain an action for damages under the provisions of Section 33 of the Merchant Marine Act of 1920, U. S. Code, Title 46, Section 688; 41 Statutes at Large 1007; and a copy of the order to enter said appearance together with a letter in explanation of the action, copy of which is attached hereto and made a part hereof, was duly served upon plaintiff's attorney.

5. On September 26, 1931, plaintiff filed her statement of claim, wherein she elected to maintain an action for damages under the provisions of Section 33 of the Merchant Marine Act of 1920. A copy of said statement of claim was served on September 26, 1931, upon your petitioner's counsel.

6. Section 33 of the Merchant Marine Act of 1920, U. S. Code, Title 46, Section 688; 41 Statutes at Large 1007, provides as follows:

"Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the [fol. 7] right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. *Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located.*"

Wherefore your petitioner prays your Honorable Court to issue a rule upon plaintiff to show cause why the above entitled action should not be dismissed for want of jurisdiction. All proceedings to stay meanwhile.

(Signed) James M. West, III, Attorney for Petitioner.][1]

Duly sworn to by James M. West, 3rd. Jurat omitted in printing.

[fol. 8] In Court of Common Pleas of Philadelphia County

Rule

And Now, October 10, 1931, upon consideration of the within petition, and on motion of James M. West, 3rd, Esquire, the Court grants a rule on the plaintiff to show cause why the above entitled action should not be dismissed for want of jurisdiction. Returnable October 16, 1931, at 1:30 P. M. All proceedings to stay meanwhile.

(Signed) Finletter.

IN COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

ORDER OF THE COURT

November 6, 1931.—Rule Absolute.

IN COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY

OPINION

FINLETTER, P. J.:

This is a suit to recover damages for personal injuries sustained by a seaman, alleged to have been caused by the negligence of the defendant.

[fol. 9] It therefore is based upon Section 33 of the Merchant Marine Act of 1920, U. S. Code, Title 46, Section 688, 41 Statutes at Large 1007, commonly called the "Jones Act".

Defendant raised the question of jurisdiction by petition presented immediately after the filing of plaintiff's statement. Until the statement was filed, defendant could not know whether or not plaintiff's intended claim was under the Merchant Marine Act. The summons might relate to any action of trespass. When by the statement it was evident that plaintiff had elected to proceed under the Act, defendant made prompt objection to the jurisdiction.

Before the passage of the Jones Act seamen possessed the following remedies, (1) an action in rem in the Federal Courts for maintenance and cure, wages, and indemnity, if the vessel is unseaworthy; (2) an action in personam in either Federal or State Courts for the like causes; to which is added by Section 33 of the Jones Act an action for damages for negligence in either the State or Federal Courts.

It was determined in Engel v. Davenport, 271 U. S. 33, 46 S. Ct. 410, 70 L. Ed. 813, that jurisdiction is concurrent in both State and Federal Courts.

Question is raised in the instant case whether the jurisdiction of the State Courts is limited to the district of the residence of the defendant, or, in the case of a corporation, to the district of its principal office; or whether, on the other hand, all State Courts are open to such claims.

The answer depends upon the interpretation of the last part of Section 33, which provides:

"Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides, or in which his principal office is located."

[fol. 10] It is argued by plaintiff that the provision cited above was held in the Engel case, and others, to prescribe only the venue of actions brought in the Federal Courts. It is true that they do hold that actions brought in the Federal Courts must be in the district of residence, but it does not follow, and was not held, that actions brought in State Courts were not subject to the same limitation.

The legislative reasons for limiting the new right of action in Federal Courts to the residence of the defendant apply with equal force to actions brought in State Courts.

Much is made by the plaintiff of the use of the word "district" in the Act, it being argued that that word has special significance and limitation to Federal districts. It is not in fact so limited. And it is not true, as argued by plaintiff, that Federal Courts alone have districts. For example, our own court is "The Court of Common Pleas, No. 4, of the First Judicial District of Pennsylvania".

In Patterson v. Standard Oil Co., 41 Fed. (2) 219 Judge Hand said: "The clause 'the court of the district in which the defendant employer resides' fits a State Court properly enough because the word 'district' will answer the local jurisdiction of such a court as well as a Federal district. The use of the singular is not significant, since the phrase 'the court' may have been used distributively, i. e., 'any court'. Besides, the earlier express provisions leave no doubt."

In Caceres v. U. S. Shipping Board, 299 Fed. 968, suit was brought in a New York State Court. The action was removed to the Federal Court, and was there dismissed because the defendant's principal office was not in New York, the Court saying, "The motion to dismiss the complaint * * * must be granted, not in the exercise of discretion, but under the express provisions of the Merchant Marine Act".

A similar result followed in Wienbroer v. U. S. Shipping Board, 299 Fed. 272.

In our opinion we have no jurisdiction because the principal office of the defendant is not within the First Judicial District of Pennsylvania.

[fol. 11] In Supreme Court of Pennsylvania for the Eastern District

No. 5629, December Term, 1929

Anna S. Bainbridge, Plaintiff,

—

Merchants & Miners Transportation Company, a Maryland Corporation, Defendant

Court of Common Pleas No. 4 of the County of Philadelphia

Nature of Case (See Note): Question of Jurisdiction in Law

Appeal and Affidavit—Filed Nov. 20, 1931

Enter appeal on behalf of Anna S. Bainbridge from the Order of the Court of Common Pleas No. 4 of the County of Philadelphia Returnable Monday, December 7th, 1931.

(Signed) Wm. Chas. Brown, Attorneys for Appellant.

To Thomas Robbins, Prothonotary, Supreme Court, Eastern District.

County of Philadelphia, ss:

William Charles Brown, being duly sworn, saith that said Appeal is not taken for the purpose of delay, but because Appellant believes she has suffered injustice by the order from which she appeals.

Wm. Chas. Brown.

Sworn and subscribed this 18 day of November, A. D. 1931. (Sgd.) Marie B. Dallas, Notary Public. My commission expires March 5, 1933. (Seal).

NOTE.—This space need not be filled in unless the case is in one of the following classes:

(1) Workmen's Compensation.

(2) Mandamus.

(3) Quo Warranto.

(4) Injunction.

(5) Decree requiring an account (see Act of June 24, 1895, Sec. 1, P. L. 243).

(6) Capital Case.

(7) Question of Jurisdiction in Law or Equity (see Act of March 5, 1925, Sec. 3, P. L. 23).

It is important that the prothonotary should be notified as above, in order that the Certiorari may be drawn returnable according to law.

[File endorsement omitted.]

[fol. 12] IN SUPREME COURT OF PENNSYLVANIA, EASTERN DISTRICT

[Title omitted]

APPELLANT'S SUBSTITUTED ASSIGNMENT OF ERROR—Filed Jan. 5, 1932

The appellant, Anna S. Bainbridge, assigns as error the action of the Court below in making absolute the rule of the appellee to show cause why the above entitled action should not be dismissed for want of jurisdiction, the rule and the court's action thereon being as follows:

Rule

"And now, October 10, 1931, upon consideration of the within petition, and on motion of James M. West, 3rd, Esquire, the Court grants a rule on the plaintiff to show cause why the above entitled action should not be dismissed for want of jurisdiction. Returnable October 16, 1931, at 1.30 P. M. All proceedings to stay meanwhile.

(Sgd.) Finletter, J.

Order of the Court

"November 6, 1931.—Rule Absolute."
(Signed) Edwin J. McDermott, Attorney for Appellant.

[File endorsement omitted.]

[fol. 13] In Supreme Court of Pennsylvania, Eastern District, January Term, 1932

No. 136

Anna S. Bainbridge, Appellant,

v.

Merchants & Miners Transportation Company, a Maryland Corporation

Appeal from Order of the Court of Common Pleas No. 4, Philadelphia County

Opinion—Filed Feb. 3, 1932

Per Curiam:

The order of the court below dismissing this action for want of jurisdiction is affirmed on the opinion of Judge Finletter, which clearly and adequately discusses the question involved.

[File endorsement omitted.]

[fol. 14] In Supreme Court of Pennsylvania, Eastern District

[Title omitted]

Order Endorsed on Petition for Reargument

"March 14, 1932.—Reargument refused. Per Curiam."

[fol. 15] Prothonotary's certificate to foregoing transcript omitted in printing.

[fol. 16] Certificate of Chief Justice omitted in printing.

Prothonotary's Certificate to Chief Justice omitted in printing.

[fol. 17] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 10, 1932

The petition herein for a writ of certiorari to the Supreme Court of the State of Pennsylvania is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on cover: File No. 36,781. Pennsylvania Supreme Court. Term No. 90. Anna S. Bainbridge, petitioner, vs. Merchants & Miners Transportation Company. Petition for a writ of certiorari and exhibit thereto. Filed May 19, 1932. File No. 36,781.